## UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 4, affiliated with UNITED FOOD AND COMMERCIAL WORKERS UNION (SAFEWAY, INC.)

and

Case 19-CB-9660

PAMELA BARRETT

## ORDER DENYING MOTION FOR RECONSIDERATION

On August 26, 2010, the National Labor Relations Board, by a three-member panel, issued a Decision and Order in this proceeding, affirming the judge's rulings, findings, and conclusions and adopting the recommended Order only to the extent and for the reasons stated in the Board's earlier decision reported at 353 NLRB 469 (2008), as modified by a January 21, 2009 unpublished Order. In its earlier decision, which was incorporated by reference in the Board's August 26, 2010 decision, the Board reversed the judge's decision and found that the Respondent failed to provide the Charging Party, a *Beck* 

a delegee group of at least three members must be maintained.

<sup>355</sup> NLRB No. 133 (unpublished correction issued September 24, 2010).
The earlier decision was issued by the two sitting members of the Board.
Thereafter, on June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board,

objector,<sup>3</sup> with sufficiently verified expenditure information, consistent with *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review dismissed 1999 WL 325508 (D.C. Cir. 1999). Accordingly, the Board found that the Respondent violated its duty of fair representation and thus Section 8(b)(1)(A). In doing so, the Board declined the Respondent's request that the Board modify its chargeable expense reporting requirements to be consistent with the Department of Labor (DOL) reporting requirements set forth in the DOL Form LM-2. In the August 26, 2010 decision, Member Becker, writing separately, stated his view that the Board should consider, in an appropriate case, modifying its expenditure reporting requirements. *See Food & Commercial Workers Local 4 (Safeway, Inc.)*, supra, 355 NLRB No. 133, slip op. at 1 fn.3.

On September 9, 2010, the Respondent filed a motion for reconsideration. In support of the motion, the Respondent contends that the Board should engage in discussions with the Department of Labor to ensure that the two agencies have consistent financial reporting requirements for unions and that the Board's August 26, 2010 Decision and Order should be rescinded pending such discussions. In addition, relying on the Board's recent decision in *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174 (2010), the Respondent contends that the issue in this case – the sufficiency of expenditure

Communications Workers of America v. Beck, 487 U.S. 735 (1988) (Supreme Court limited the dues and fees a union can collect from objecting nonmember employees under a contractual union-security clause to amounts expended on activities germane to the union's role as collective-bargaining representative).

information provided to *Beck* objectors – is governed by the duty of fair representation standard, that the Respondent's actions in this case met that standard, and the Board should reconsider its decision under that standard.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered this matter, we find that the Respondent's motion does not present extraordinary circumstances necessary under Section 102.48(d)(1) of the Board's Rules and Regulations to warrant reconsideration of the Board's decision. Accordingly, we deny the motion as raising no issue not previously considered by the Board and as lacking merit.<sup>4</sup>

As stated above, the Board previously considered and declined the Respondent's request that the Board modify its expenditure reporting requirements for unions in this case. See *Food & Commercial Workers Local 4* (*Safeway, Inc.*), supra, 355 NLRB No. 133, incorporating by reference 353 NLRB at 471, fn.8 (2008).

In addition, contrary to the Respondent's claim, the Board applied the duty of fair representation standard in deciding this case. The Board relied on principles set forth in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998), and *KGW Radio*, supra, cases which apply the duty of fair representation standard. Moreover, in finding that the Respondent failed to provide the Charging Party with expenditure information that was sufficiently verified under the standards set forth in *KGW Radio*, the Board specifically concluded that the Respondent violated its duty of fair representation. See *Food & Commercial Workers Local 4 (Safeway, Inc.)*, supra, 355 NLRB No. 133, incorporating by reference 353 NLRB at 471.

Member Hayes did not participate in the underlying decisions. He has said elsewhere that he is "in sympathy with the view[]...that the standard for analysis in duty-of-fair representation cases should not apply when dealing with *Beck* allegations as it is unjustifiably deferential." *Machinists Local Lodge 2777 (L-3 Communications*), 355 NLRB No. 174, slip. op. at 13 (2010). But he need not reach those matters here because he agrees that the Respondent's motion presents no circumstances that would warrant reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations. He therefore joins his colleagues in denying the motion.

IT IS ORDERED that the Respondent's motion for reconsideration is denied.

Dated, Washington, D.C., October 25, 2010.

	Wilma B. Liebman,	Chairman	
	Craig Becker,	Member	
	Brian E. Hayes,	Member	
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